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IN THE
Supreme Court of the United States

OCTOBER TERM, 1924.

—
No. 302.
—

SANTA FE PACIFIC RAILROAD COMPANY, *Appellant.*

vs.

HUBERT WORK, SECRETARY OF THE INTERIOR, *Appellee.*

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SUPPLEMENTAL BRIEF OF APPELLANT.
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ALEXANDER BRITTON,
F. W. CLEMENTS,
Attorneys for Appellant.



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SUPPLEMENTAL BRIEF OF APPELLANT.

In quoting the act of June 22, 1874 (18 Stats. 194), the statute under consideration, due to some possible oversight in proofreading or otherwise, the second proviso to the act was omitted and to meet this oversight we now quote the act in full.

“Be it enacted by the Senate and House of representatives of the United States of America in Congress assembled, That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose

entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands, so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: Provided, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: And provided further, That this act shall not be construed so as in any maner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land-office of the withdrawal of such lands from market."

In this connection, in appellee's brief, reference is made to a part of the legislative history of this act, and in order that the court may be fully informed, we give a more detailed and complete history of the legislation as far as available.

This legislation was recommended by the Commissioner of the General Land Office in his letter of March 13, 1874, addressed to Hon. Wm. Wyndom,

U. S. Senate. We here quote his letter in full, together with a draft of the legislation as proposed by him:

March 13, 1874.

Hon. Wm. Wyndom,
U. S. Senate.

Sir:

Referring to the communication filed by you from J. C. Braden, Esq., Litchfield, Minn. and which is herewith returned, relative to the claims of certain settlers whose entries and filings were held for cancellation by this office 28th Jan. 1873, for conflict with the grant to the St. Paul & Pacific R. R. Co.

I have the honor to state that these entries and filings, with a great many others, falling in the different land districts, along the Main line and St. Vincent Extension of the St. Paul & Pacific Railroad, were based upon settlement made prior to the survey of the lands, but subsequent to the definite location of the road, when the right of the company attached under their grant.

This Office had therefore no alternative when the cases were reached in the regular order of business, but to hold them for cancellation.

It is beyond doubt, as stated by Mr. Braden, a great hardship to these settlers to be thus deprived of the labor of years, through no fault of their own, as neither they nor the district land officers were aware at the date of settlement and entry, that the right of the Company had already attached to the lands, and if possible, it is very desirable that some Congressional legislation be enacted for their relief.

In view of the statement made in the letter of Hermann Trott, Esq., Land Commissioner of said company, attached to Mr. Braden's letter, to the effect that said Company would probably, if called

upon, relinquish their claim to the lands, if their rights were not prejudiced thereby. I would suggest that as there is no authority of law to legalize such entries, even in case of a relinquishment by the Company, except by submission to a board of confirmation, an act of Congress authorizing such relinquishment, and legalizing the entries might be passed.

It should however be of a general character applying to all such cases within the limits of any Railroad grant, and as an inducement to the Companies to so relinquish, the right to select other lands in lieu of those surrendered should be secured to the said companies.

The selections might be allowed from the alternate Government sections within the limits of the grant, not otherwise appropriated at date of selection.

I enclose herewith draft of a Bill for your consideration, which it is thought will if passed accomplish the object desired.

Very Respectfully,
WILLIS DRUMMOND,
Commissioner.

A Bill for the relief of settlers on Railroad Lands.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

That whenever in the adjustment of a Railroad grant any of the lands granted shall be found in the possession of an actual settler, whose entry or filing has been allowed under the pre-emption or homestead laws of the United States, the grantees upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other

lands in lieu thereof, from any of the public lands within the limits of the grant, not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. Any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted.

It will be noted that in the draft submitted by the Commissioner, in lieu of the land relinquished, the grantee company "shall be entitled to select an equal quantity of other land in lieu thereof, from any of the public lands within the limits of the grant, not otherwise approved at the date of selection, to which they shall receive title the same as though originally granted."

As recommended the bill was passed by the House with the addition of the following:

"But nothing herein contained is in any manner to be construed as to enlarge the grant to any such railroad; and this act is not to be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land office of the withdrawal of such lands from market."

Now it will be noticed that as recommended by the Commissioner of the General Land Office, and as the bill was passed by the House, there was no reference to *mineral lands*, in providing for the selection of lieu lands, and it must have been understood that the lieu lands were to be taken on the same terms as provided for *other lieu lands* in each of the granting acts, ex-

cept that the class of lands subject to selection included "the alternate government sections within the limits of the grant."

The Commissioner in his letter recommending the legislation had plainly called the attention of Congress to the fact that an *inducement* must be offered the companies to secure relinquishment in favor of the meritorious class mentioned, and the intention was clearly to *extend* and not *limit or reduce the lieu right provided in the original grant*. As before stated, both the Commissioner and the House of Representatives must have been of opinion that the conditions of the original granting act regarding mineral lands prevailed and this could only be because of the provision that the grantees were to receive the title to these lieu lands "the same as though originally granted."

In this connection, we call further attention to the fact that the amendment by the House was what might be called an attempted legislative construction of the granting acts, or an attempt to read into the granting acts an exception of lands included in homestead and pre-emption entries made after the date of definite location of the railroad, but before notice of the withdrawal thereunder was received at the local land office. The House was therefore seeking to make the protection possible under the *original act* and could therefore have had no possible reason to limit the ordinary indemnity right as therein provided for.

Looking further to the legislative history, we find that when the bill reached the Senate it was taken up under unanimous consent and the following occurred:

Mr. Hager: "I have some amendments to offer which are not objected to by the committee."

Mr. Edmunds: "Let the bill be considered subject to objection, for if we are to have new matter inserted, we must reserve the right to object."

The President

Pro tempore: "The bill will be considered subject to objection."

Mr. Hager: "My first amendment is to insert after the words 'lands in line 13' the words 'not mineral.' "

Mr. Wyndom: "There is no objection to that. The amendment was agreed to."

This clearly indicates that the insertion of the words "not mineral" was not considered as new matter, that is, it must have been considered that those words were merely inserted out of abundant caution and carried no more than would have carried by the bill had the words been omitted, for no explanation was even called for.

We have examined the Congressional Record relating to the 43rd Congress and have inquired at the document room at the Capitol and are unable to find that any written report was ever made by either the House or Senate on the bill resulting in the legislation under consideration.

Nearly two years later the Congress passed the act of April 21, 1876 (19 Stats. 35) intended to protect like settlers within railroad limits without any provision for indemnifying the railroad grantee. This act provided:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all pre-emption and homestead entries, or entries in compliance with any law of the United States, of the public lands,

made in good faith, by actual settlers, upon tracts of land of not more than one hundred and sixty acres each, within the limits of any land-grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land-office of the district in which such lands are situated, or after their restoration to market by order of the General Land-Office, and where the pre-emption and homestead laws have been complied with, and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed, and patents for the same shall issue to the parties entitled thereto. Sec. 2. That when at the time of such withdrawal as aforesaid valid pre-emption or homestead claims existed upon any lands within the limits of any such grants which afterward were abandoned and, under the decisions and rulings of the Land Department, were re-entered by pre-emption or homestead claimants who have complied with the laws governing pre-emption or homestead entries, and shall make the proper proofs required under such laws, such entries shall be deemed valid, and patents shall issue therefor to the person entitled thereto. Sec. 3. That all such pre-emption and homestead entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land-grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such claim to a patent therefor."

The legislation of June 22, 1874, and April 21, 1876, was prior to the decision of this court in the case of *Van Wyck v. Knevals*, 106 U. S. 330, October term, 1882, wherein, considering the grant made by the act

of July 23, 1866, for the benefit of the St. Joseph & Denver City Railroad Company, it was held:

"That the grant was *in praesenti* and attached to those sections (meaning the granted sections) as soon as the map was so filed. No valid adverse right or title to any part of them could be acquired by a subsequent settlement or entry." Syllabus.

To invoke the act of June 22, 1874, *supra*, it was necessary that the settler should have been allowed to make entry of the land. By the act of August 29, 1890, 26 stats., 369, it was provided:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges granted by the aforesaid act approved June twenty-second, eighteen hundred and seventy-four, are hereby extended (subject to the provisos, limitations, and restrictions thereof) to all persons entitled to the right of homestead or pre-emption under the laws of the United States, who have resided upon and improved for five years lands granted to any railroad company, but whose entries or filings have not for any cause been admitted to record."

It should be clearly understood that the appellant company is not seeking *mineral lands*. Its granting act excepted *mineral lands*, but the word "mineral," it was provided, should not include coal and iron. This meant nothing less than that lands containing coal deposits, no matter how valuable, were not to be construed as *mineral lands*, and therefore within the exception of such lands from the operation of the grant.

ALEXANDER BRITTON,
F. W. CLEMENTS,
Attorneys for Appellant.